

**FILED**

JUN 05 2020

HEIDI PERCY  
COUNTY CLERK  
SNOHOMISH CO. WASH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF SNOHOMISH

JASON ROMERO, an individual, )  
Plaintiff, ) Case No. **20.2 03145 31**  
vs. ) **COMPLAINT FOR DAMAGES**  
) (Civil Rights, and Jury Trial Demanded)  
STATE OF WASHINGTON, )  
WASHINGTON STATE DEPARTMENT )  
OF CORRECTIONS, ARIEG AWAD, )  
JULIA BARNETT, MARY GUMBO, )  
ADELAIDE HORNE, and DOES I-X )  
inclusive, )  
Defendants. )

COMES NOW Plaintiff Jason Romero, by and through the undersigned attorney, and for the causes of action against the above-named Defendants, alleges and avers as follows:

**I. INTRODUCTION**

1. Plaintiff Jason Romero is currently an inmate at the Twin Rivers Unit of the Monroe Correctional Complex in Monroe, Washington. Plaintiff, by and through his undersigned counsel, files this Complaint for declaratory relief and damages against defendants, in their

**COMPLAINT FOR DAMAGES - 1**

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1 individual capacities, for violations of his Eighth Amendment rights and Washington State law.  
2 He brings this action due to defendants' denial of medical treatment, and delay of medical  
3 treatment in violation of Department of Corrections policy and the United States constitution.  
4 Defendants, and each of them, have been deliberately indifferent to the serious medical needs of  
5 plaintiff. As a result, defendants have violated plaintiff's Eighth Amendment rights and have  
6 caused plaintiff to suffer deprivation of his civil, statutory and constitutional rights, physical  
7 injury, and mental and emotional distress.

## 8 II. VENUE

9 2. All of the unlawful acts and practices alleged herein occurred in or near the City  
10 of Monroe in Snohomish County, Washington. Thus, the Snohomish County Superior  
11 Courthouse is the appropriate forum for this matter.

## 12 III. PARTIES

13 3. Plaintiff Jason Romero is an adult male inmate currently incarcerated in the Twin  
14 Rivers Unit of the Monroe Correctional Complex ("MCC") in Monroe, Washington. At all times  
15 relevant hereto plaintiff was housed at MCC, a facility owned and operated by the Washington  
16 State Department of Corrections.

17 4. Defendant State of Washington is and was at all times relevant hereto the  
18 employer of all other defendants and the public entity that had complete control over plaintiff  
19 because he was housed in its prison system.

20 5. Defendant Washington Department of Corrections ("DOC") is an agency of the  
21 State of Washington and is a public entity that has complete control over plaintiff because he is  
22 housed in its prison system.

23 6. Defendant Arieg Awad is and was the acting Facility Medical Director of the  
Monroe Correctional Complex beginning in October 2018.

**COMPLAINT FOR DAMAGES - 2**

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1           7. Defendant Julia Barnett was the acting Facility Medical Director at Monroe  
2 Correctional Complex from May 2017 until October 2018.

3           8. Defendant Mary Gumbo is and was at all times relevant hereto an Advanced  
4 Registered Nurse Practitioner at Monroe Correctional Complex.

5           9. Defendant Adelaide Horne is and was at all times relevant hereto a Physician's  
6 Assistant at Monroe Correctional Complex.

7           10. Defendants Does I through X are employees of the Washington State Department  
8 of Corrections to be identified through the discovery process.

9           11. Each defendant is, and at all times herein mentioned was acting under color of  
10 law and was an agent of the State of Washington and acting within the course and scope of their  
11 employment with that entity in causing the harm as herein alleged.

#### 12                           IV. ADMINISTRATIVE PROCEEDINGS

13           12. Plaintiff filed a tort claim on March 27, 2020. More than 60 days have passed, and  
14 the State of Washington has not responded. As a matter of law, plaintiff's tort claim has been  
15 rejected. Plaintiff has exhausted all possible grievances and pursued all administrative remedies  
16 available to him.

#### 17                           V. STATEMENT OF FACTS

18           13. Plaintiff Jason Romero is an inmate currently housed within the Twin Rivers Unit  
19 ("TRU") of the Monroe Correctional Complex ("MCC"), a prison facility owned and operated  
20 by the Washington State Department of Corrections ("DOC").

21           14. Plaintiff suffers from keratoconus, a condition which causes the corneas of his  
22 eyes to distend, resulting in significant vision distortion and impairment. Plaintiff first received  
23 treatment for this condition from Harborview Medical Center ("HMC") in 2003 in the form of  
eye drops and pain management medication.

COMPLAINT FOR DAMAGES - 3

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1           15.     On June 3, 2009, plaintiff received a cornea transplant in his left eye to treat the  
2 vision loss and distortion caused by his condition. The procedure was performed by Dr. Tueng T.  
3 Shen at HMC. By this time, plaintiff was already incarcerated within MCC. He received similar  
4 procedures on his right eye in December 2010 and January 2011, both performed by Dr. Shen.  
5 Plaintiff had regular follow-up appointments with Dr. Shen in the months following all three of  
6 these procedures to monitor his condition.

7           16.     In October 2015, plaintiff was diagnosed with a graft rejection of the cornea  
8 transplant in his left eye. He was examined at TRU by Alan Copeland, OD, on December 17,  
9 2015. Copeland noted the left graft rejection in his writeup of the encounter.

10          17.     On April 10, 2016, plaintiff declared a medical emergency to DOC staff,  
11 complaining of eye pain and drainage. He was seen the same day by S. Fields, RN at the TRU  
12 infirmary. The following day defendant Mary Keppler, ARNP, submitted an urgent consultation  
13 request for plaintiff, which once again noted the graft rejection in his left eye.

14          18.     In the following days, plaintiff had to declare two more medical emergencies for  
15 eye pain, photosensitivity, and drainage. He was diagnosed with a corneal ulcer and corneal  
16 edema on April 13, 2016 and admitted into the MCC Inpatient Unit ("IPU") for care and  
17 observation on April 17, 2016.

18          19.     On April 22, 2016, plaintiff was seen by Dr. Michael R. Banitt and Dr. Yungtai  
19 Kung at the HMC Eye Institute. Both encounter reports noted that plaintiff's primary  
20 ophthalmologist, Dr. Shen, had not seen plaintiff since 2014, and recommended that plaintiff  
21 return to HMC within the next week.

22          20.     Plaintiff was discharged from MCC IPU several days later, on April 27, 2016. His  
23 discharge summary noted a plan to continue following up with plaintiff's providers at HMC, and

1 a consultation request for follow up was issued the same day by DOC physician Dr. Diego Lopez  
2 de Castilla.

3 21. Plaintiff saw Dr. Banitt again for follow up on April 29, 2016. In his encounter  
4 report and DOC consultation report from this visit, Dr. Banitt recommended that plaintiff return  
5 again in another one to two weeks for follow up with Dr. Shen.

6 22. Nearly six months later, on October 4, 2016, plaintiff was seen by multiple DOC  
7 medical staff for eye pain, itchiness, drainage, and blurry vision. He was taken to Northwest Eye  
8 Surgeons ("NW Eye") later that day for a suture removal from his right eye. Upon returning to  
9 MCC he was once again admitted into IPU for a one-day recovery. He reported to staff that he  
10 had no loss of vision at that time.

11 23. On October 13, 2016, plaintiff finally saw Dr. Shen for a follow-up. Following his  
12 appointment, Dr. Shen informed plaintiff and his DOC providers that he would need to follow a  
13 prescribed course of eye drops for his transplants, and that after some time on the prescription he  
14 would need another corneal transplant surgery in his left eye. She instructed plaintiff's DOC  
15 providers to have him return to HMC for follow-up within two to three months. Plaintiff was not  
16 informed about this instruction and did not know when to expect his next follow-up visit with  
17 Dr. Shen or how soon he would need his next surgery.

18 24. After seeing Dr. Shen in October 2016, plaintiff was careful to follow his  
19 prescribed eye drop treatments as he had been instructed, and consistently submitted timely refill  
20 requests with MCC medical to ensure that he did not run out while awaiting his surgery. He was  
21 also issued sunglasses by DOC to alleviate his continued photosensitivity. During this time,  
22 multiple medical staff at MCC signed off on his prescription refills, however no follow-up  
23 appointments or consultation requests were issued.

1           25.     As the months passed, plaintiff began to notice that the vision in his left eye was  
2 fading. On May 23, 2018, plaintiff sent a Health Services Kite (“HSK”) to MCC medical stating  
3 that the vision in his left eye had gone, and that he needed to be scheduled for surgery as soon as  
4 possible. He received no response for over a month.

5           26.     Finally, on June 27, 2018, K. Martinez, MA, replied to plaintiff’s HSK, informing  
6 him that he had an eye appointment scheduled with MCC medical the following day.

7           27.     On June 28, 2018, plaintiff was seen at MCC medical by H. Humphrey, RN2,  
8 who performed a visual acuity test, noting that plaintiff reported no vision in his left eye. Despite  
9 this, no further consults or appointments were scheduled for plaintiff, nor was he given any  
10 additional information about his care plan.

11           28.     A consultation request was issued by defendant Gumbo on July 10, 2018 and  
12 approved by defendant Julia A. Barnett the following day, however this request was withdrawn  
13 before any reports were gathered. On July 20, 2018, defendant Barnett signed off on a renewal  
14 for one of plaintiff’s eye drop prescriptions, but no further action was taken by any DOC staff to  
15 schedule or arrange any follow-ups or other appointments at that time.

16           29.     On November 18, 2018, plaintiff submitted another HSK again asking if he had  
17 been scheduled for eye surgery yet. Defendant Adelaide Horne, PA-C, responded later that  
18 month, informing him that there was no surgery scheduled, but that he was scheduled to see the  
19 optometrist for evaluation. She instructed him to sign up to be seen by a provider “if the issue  
20 has worsened.”

21           30.     On January 14, 2019, plaintiff submitted yet another HSK, explaining that Dr.  
22 Shen had told him over two years prior that he needed another cornea transplant for his left eye,  
23 and that he had since completely lost vision in that eye while waiting for surgery. Defendant

1 Horne responded three days later telling him that he would be scheduled for an ophthalmology  
2 appointment soon. That same day she entered a two-month consultation request, which was later  
3 approved by defendant Arieg Awad, noting that plaintiff was “last seen by ophthalmology 2  
4 years ago, lost to follow-up.”

5 31. From January 2019 to June 2019, plaintiff was seen by defendant Gumbo and  
6 other MCC medical staff and by an optometrist at NW Eye. He continued to inquire via HSKs  
7 and in person about his treatment and surgery plan, but the only reply he ever received was to tell  
8 him that he had been “scheduled for an appointment.”

9 32. On June 11, 2019, plaintiff had his first follow-up with Dr. Shen since October  
10 2016. Upon evaluation of plaintiff’s condition, Dr. Shen reported to DOC that he needed to be  
11 evaluated every 4-6 months, and that the blindness in his left eye was the result of lost follow-up.  
12 She also firmly requested that he be provided timely follow up for treatment of his right eye, to  
13 avoid risking complete blindness.

14 33. On July 2, 2019, after being informed by Dr. Shen that there was nothing that  
15 could be done to restore the vision in his left eye, plaintiff filed a grievance for the delay of care.

16 34. Plaintiff saw Dr. Shen again for a follow up on September 17, 2019, and she  
17 reaffirmed her recommendation against going through with another transplant surgery on his left  
18 eye.

19 35. Plaintiff’s eye condition and corneal transplant history were well established and  
20 documented throughout the course of his incarceration within DOC facilities. His providers at  
21 MCC were also well aware of the graft rejection in his left eye as early as October 2015. Yet  
22 despite the repeated recommendations for consistent follow up given by his providers at HMC as  
23 well as a clear warning that proper and consistent treatment would be essential to avoid



1 transplant failures in the future, DOC failed to properly adhere to plaintiff's medically necessary  
2 treatment plan.

3 36. Plaintiff repeatedly attempted to warn staff of his vision loss during the time  
4 period in which he was apparently "lost to follow-up," however, DOC acted with deliberate  
5 indifference.

6 37. As a result of DOC's negligence, plaintiff has now completely and permanently  
7 lost vision in his left eye. This has since forced him to request accommodations which would  
8 have otherwise been unnecessary, such as assignment to a lower bunk as his vision and depth  
9 perception are now impaired to the point that top bunk placement has become hazardous.

10 38. The physical damage done to plaintiff is at this point irreparable as is the  
11 psychological and emotional damage. The overall quality of his life has been and will continue to  
12 be significantly diminished for the rest of his life.

## 13 VI. FIRST CAUSE OF ACTION

14 (42 U.S.C. § 1983 – Eighth Amendment – Cruel and Unusual Punishment—Against Arieg  
15 Awad, Julia Barnett, Mary Gumbo, Adelaide Horne, DOES I-X inclusive)

16 39. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 38  
17 with the same force and effect as if such paragraphs were separately realleged in this First Cause  
18 of Action.

19 40. The Eighth Amendment protects inmates against infliction of "cruel and unusual  
20 punishment." Defendants violated the Eighth Amendment by acting with deliberate indifference  
21 to the serious medical needs of the plaintiff.

22 41. At all times material hereto, defendants jointly and severally had a duty under the  
23 Eighth Amendment of the U.S. Constitution to not be deliberately indifferent to the known



1 serious medical needs of inmates at the Washington Department of Corrections (“DOC”). This  
2 duty arose from the individual defendant’s capacity as agents or employees of the DOC. Because  
3 defendants had a non-delegable duty to provide medical services to the plaintiff, the DOC and its  
4 agents and employees acted under the color of law while providing these services.

5 42. Defendants failed to provide adequate medical care for plaintiff contrary to  
6 medical records showing his need for timely treatment and plaintiff’s attempts to inform them of  
7 urgent developments in his condition. Despite defendants’ knowledge of his medical needs, each  
8 individual defendant intentionally, or through the exercise of deliberate indifference, failed or  
9 refused to provide plaintiff with the proper medical care and attention known to be necessary  
10 under plaintiff’s circumstances.

11 43. As a direct and proximate result of the actions and omissions of the defendants as  
12 described above, plaintiff has suffered chronic pain, loss of his liberty, and aggravation of his  
13 pre-existing medical conditions. He has been deprived of freedoms that are enjoyed by other  
14 inmates. The full extent of his injuries will be proven at trial.

15 44. The actions of the individual defendants, as described in this complaint, were  
16 deliberately indifferent to the serious medical needs of plaintiff and done in conscious disregard  
17 of the harm that would be inflicted upon plaintiff.

## 18 VII. SECOND CAUSE OF ACTION

### 19 (Negligence—Against all Defendants)

20 45. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 44  
21 with the same force and effect as if such paragraphs were separately realleged in this Second  
22 Cause of Action.  
23

1           46.     Because plaintiff is an inmate within the Department of Corrections, the  
2 Department has full control over all aspects of his life including his movements, access to  
3 medical providers and access to medication. DOC therefore had a duty to ensure that plaintiff  
4 received the medical treatment that his condition warranted. DOC breached that duty by failing  
5 to follow plaintiff's doctor's instructions and unreasonably delaying treatment.

6           47.     Due to the DOC's failure to coordinate plaintiff's care, plaintiff was given no  
7 chance to fight his progressive loss of vision or mitigate his physical and emotional pain and  
8 suffering.

9           48.     Through its negligence in failing to timely approve and coordinate plaintiff's  
10 treatment, the Department of Corrections has caused plaintiff bodily injury, pain and suffering,  
11 and mental and emotional distress. Defendants' negligence has caused plaintiff's loss of eyesight  
12 and made his life emotionally unbearable. They caused his existing condition to worsen to the  
13 point of becoming a permanent blindness in his left eye. Accordingly, plaintiff is entitled to  
14 damages in an amount to be proven at trial.

## 15                               **VIII. THIRD CAUSE OF ACTION**

### 16                               **(Medical Malpractice—Against all Defendants)**

17           49.     Plaintiff realleges and incorporates by reference herein paragraphs 1 through 48  
18 with the same force and effect as if such paragraphs were separately realleged in this Third  
19 Cause of Action.

20           50.     In their recognized role as a medical facility, the Department of Corrections failed  
21 to coordinate the necessary steps for plaintiff to access care at outside providers and facilities  
22 that are equipped to provide him with the corneal transplant that Dr. Shen had informed them  
23

1 that plaintiff needed. The Department of Corrections was the only entity capable of coordinating  
2 plaintiff's care because plaintiff is incarcerated in their facilities and fully under their control.

3 51. Due to delays in care caused by the Department of Corrections, plaintiff's  
4 condition progressed rapidly and became incurable.

5 52. As plaintiff's primary care provider and the Facility Medical Director of the  
6 Washington Corrections Center, defendant Arieg Awad failed to appropriately monitor  
7 plaintiff's condition and treatment.

8 53. The general treatment of plaintiff, as described in this complaint, fell well below  
9 the medically accepted standard of care for the treatment of keratoconus. By their failure to  
10 adhere to the standards of care in coordinating plaintiff's corneal transplant, defendants jointly  
11 and severally caused plaintiff bodily injury, pain and suffering, and mental and emotional  
12 distress. They caused his existing condition to worsen to the point of becoming permanently  
13 blind in his left eye. Accordingly, plaintiff is entitled to damages in an amount to be proven at  
14 trial.

15 **IX. FOURTH CAUSE OF ACTION**

16 **(Intentional Infliction of Emotional Distress—Against all Defendants)**

17 54. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 53  
18 with the same force and effect as if such paragraphs were separately realleged in this Fourth  
19 Cause of Action.

20 55. Defendants had direct knowledge of plaintiff's history with keratoconus and  
21 intentionally inflicted emotional distress upon plaintiff by refusing to treat plaintiff's serious  
22 medical needs.  
23

57. As a direct and proximate result of the actions and omissions of the defendants as described above, plaintiff has suffered chronic pain, loss of his liberty, and aggravation of his pre-existing medical conditions. He has been deprived of freedoms that are enjoyed by other inmates. The full extent of his injuries will be proven at trial.

WHEREFORE, plaintiff prays for the following relief against defendants:

E. For such other and further relief as the Court may deem just.

///

1 DATED this 2<sup>nd</sup> day of June, 2020.

2 CIVIL RIGHTS JUSTICE CENTER PLLC

3 /s/ Darryl Parker

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